IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3586 of 1999

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUMAN YUSUF RASUL HAFIJI & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR SANJAY M AMIN for Petitioner
MR AJ DESAI, ASSTT. Government PLEADER for Respondents : 1 - 2.
MR PRAKASH K JANI for Respondent : 3,

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/10/2007

ORAL JUDGMENT

1. By this petition, the petitioners challenge the order dated 25th September, 1995 passed by the Additional Mamlatdar & Agriculture Land

Tribunal, Patan (Annexure “E”), the order dated 26th September, 1997 passed by the Deputy Collector, Land Reforms, Mehsana (Annexure “F”) and the order dated 22nd December, 1998 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/BA/53/1998 (Annexure “G”).

2. The facts of the case are that the respondent No.3 – Agricultural Produce Market Committee, Patan decided to establish a Sub-Market Yard at Village Ranuj for the benefit of the farmers in the surrounding villages. For the purpose of establishing the Marketing Yard, the respondent No.3 purchased several parcels of land in Village Ranuj, including the lands bearing Survey No.1338 admeasuring Acres 4 – 30 Gunthas and Survey No.1339 admeasuring Acre 1 – 30 Gunthas (hereinafter referred to as “the subject lands”), after obtaining permission under Section 63 of the Bombay Tenancy & Agricultural Lands Act, 1948 (the Tenancy Act) from the Deputy Collector, Land Reforms, Patan. Thereafter, the respondent No.3 had plotted out the land of the aforesaid two survey numbers into thirty-six plots, for the purpose of being allotted to the members of the Sub-Market Yard proposed to be established at the relevant time. However, after purchasing the said land, the respondent No.3 had to pass through difficult times and therefore, could not establish a Sub-Market Yard at Ranuj. Therefore, the State

Government had, at the instance of respondent No.3, issued appropriate notification de-notifying the said Sub-Market Yard under the provisions of the Gujarat Agricultural Produce Markets Act, 1963.

3. Thereafter, the respondent No.3 decided to sell the subject lands by public auction and also prescribed certain conditions for such auction. The auction had taken place on 13.7.1986 for the sale of the aforesaid two survey numbers. The petitioners were interested in purchasing the lands bearing Survey Nos.1338 and 1339 of Ranuj Village as they were already owning, possessing and cultivating the lands bearing Survey Nos.1336 and 1337, which are situated just adjoining the aforesaid two survey numbers of respondent No.3.

4. The offer made by the petitioners at the auction was accepted and on payment of the amount of sale consideration of Rs.3,42,500/-, the respondent No.3 executed a regular sale deed on 25.11.1987 in favour of the petitioners.

5. It is the case of the petitioners that, after purchasing the said lands, they have invested considerable amount of moneys in improving the said land and in rendering it cultivable as it had remained neglected for quite a long time after it was purchased by the respondent No.3.

The petitioners had also constructed small farm houses in the said land for keeping agricultural implements and cattle, and to provide shelter to the agricultural labourers. It is the case of the petitioners that the petitioners had settled on the subject lands and have been cultivating the said lands and earning their livelihood out of the agricultural produce derived from the said lands.

6. After a period of about seven years from the date of purchase of the subject lands, the Mamlatdar & Agriculture Lands Tribunal, Patan served a notice dated 14.6.1994 on the petitioners calling upon them to show cause as to why proceedings under Section 84C should not be initiated for breach of conditions of Section 63 of the Tenancy Act. In response to the notice, the petitioners appeared before the Additional Mamlatdar and ALT, Patan and pointed out that the subject lands had been purchased by them in the year 1987, and that, considerable amount of money had been expended in improving the said lands. That, they were agriculturists within the meaning of the Tenancy Act, and as such, were even otherwise entitled to purchase the subject lands; that they had not committed any breach of the conditions of Section 63 of the Tenancy Act; that if there is any default on part of the respondent No.3 – Market Committee, the petitioners cannot be punished for such

breach; that the Mamlatdar & ALT had no jurisdiction to initiate proceedings under Section 84C of the Tenancy Act after a lapse of seven years.

7. Vide the impugned order dated 25.9.1995, the Additional Mamlatdar & ALT, Patan held that there was breach of the conditions of the order dated 2.6.1980 and accordingly, directed that the subject lands be forfeited to the Government under Section 84C of the Tenancy Act. The petitioners carried the matter in appeal before the Deputy Collector, Land Reforms, Mehsana, who by the impugned judgement and order dated 26.9.1997, dismissed the appeal. Being aggrieved by the aforesaid judgement and order, the petitioners preferred a Revision Application before the Gujarat Revenue Tribunal (Tribunal). The Tribunal, by its judgement and order dated 22.12.1998, dismissed the Revision Application and confirmed the orders passed by the authorities below, giving rise to the present petition.

8. Heard Mr.Sanjay Amin, learned advocate for the petitioners, Mr.A.J.Desai, learned Assistant Government Pleader for the respondents No.1 and 2 and Mr.P.K.Jani, learned advocate for the respondent No.3.

9. Mr.Sanjay Amin, learned advocate for the

petitioners vehemently assailed the impugned orders. It was submitted that it is settled legal position that *suo motu* powers under Section 84C of the Tenancy Act are required to be exercised within a reasonable time, however, in the present case, the registered sale deed was executed in November, 1987, whereas the proceeding under Section 84C was initiated in 1994, after a lapse of almost seven years, which by any stretch of imagination cannot be said to be a reasonable time. In support of his contention, the learned advocate placed reliance upon the decision of the Apex Court in the case of ***Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim***, (1997)6 SCC 71 as well as in the case of ***Dajibhai Kanjibhai Tandel v. The Mamlatdar and Agricultural Lands Tribunal, Pardi***, rendered in Civil Appeal No.4917 of 1984 on 27.8.1996.

10. It was next contended that, in any case, the breach of condition of the Order under Section 63 of the Tenancy Act was committed by the respondent No.3. The petitioners were bonafide purchasers of the subject lands, who had purchased the land in a public auction, which was held after following due procedure. That, due to default on part of the respondent No.3, the petitioners should not be penalized. It was submitted that, in any case, the petitioners are agriculturists and therefore, are entitled to purchase the subject lands under the provisions

of the Tenancy Act, hence, on an overall view of the matter, the respondent authorities were not justified in setting aside the transfer in favour of the petitioners and in forfeiting the lands to the Government. It was, accordingly, urged that the petition be allowed and the impugned orders be set aside.

11. On the other hand, Mr.A.J.Desai, learned Assistant Government Pleader supported the impugned orders. It was submitted that permission to purchase the agricultural lands had been granted to the respondent No.3 Market Committee under the provisions of Section 63 of the Tenancy Act, subject to certain conditions. The respondent No.3 – Market Committee had, in breach of the said condition, sold the lands to the petitioners, without prior permission of the Collector. The auction sale had taken place on 13.7.1986, whereas permission to sell the lands was sought for by the Market Committee in February 1989. That the breach of condition was committed in 1986, whereas permission for sale of lands was sought for as late as in 1989. Immediately thereafter, vide order dated 1.1.1990, the Collector had directed that proceedings under Section 84C be initiated. In the circumstances, it cannot be said that there was any delay in the initiation of proceedings under Section 84C of the Act so as to render the proceedings invalid. It was submitted that

there is no illegality or infirmity in the impugned orders so as to warrant any interference by this Court.

12. Mr.P.K.Jani, learned advocate for the respondent No.3 has supported the case of the petitioners.

13. Upon perusal of the record of the case, it is apparent that, by an order dated 2.6.1980, the respondent No.3 – Market Committee had been granted permission to purchase the subject lands for the purpose of establishing a Sub-Market Yard under the provisions of Section 63 of the Tenancy Act. Thereafter, as the Market Committee was not in a position to utilize the said lands, the same were de-notified and were put up for auction on 13.7.1986. The petitioners, who were owners of the lands adjoining the subject lands, took part in the auction and their offer was accepted and a regular sale deed was executed on 25.11.1987 in favour of the petitioners upon payment of the sale consideration.

14. Pursuant thereto, the petitioners incurred considerable expenditure in rendering the lands cultivable as well as in constructing the farm houses for keeping agricultural implements and to provide shelter to the agricultural labourers. Subsequently, the Market Committee sought permission to transfer the subject lands

in February 1989, which was rejected by the Collector, Mehsana, by an order dated 1.1.1990. By a communication dated 1.1.1990, the Collector also issued directions to initiate proceedings under Section 84C of the Tenancy Act in respect of the subject lands.

15. Pursuant to the aforesaid directions of the Collector, the proceedings under Section 84C were initiated vide show cause notice dated 14th June, 1994. Thus, it is apparent that even after the breach of condition came to the notice of the respondent authorities, suo motu inquiry under Section 84C of the Tenancy Act was initiated after a delay of more than four years.

16. In the case of ***Mohamad Kavi Mohamad Amin v. Fatmabai*** Ibrahim (supra), the transfer had taken place in the year 1972 and suo motu inquiry was started by the Mamlatdar in September, 1973. Referring to its earlier decision in the case of State of Gujarat v. Patel Raghav Natha, the Supreme Court observed that where no limit is prescribed for exercise of a power under a statute, it does not mean that it can be exercised at any time; such power has to be exercised within reasonable time. In the facts of the said case, the Court held that suo motu power under Section 84C of the Tenancy Act had not been exercised by the Mamlatdar within a reasonable time.

17.A similar view was taken by the Supreme Court in the case of ***Dajibhai Kanjibhai Tandel*** (supra). In the said case, the transfer had taken place in 1972 and the suo motu inquiry in exercise of powers under section 84C was initiated in the year 1975. Following its decision in the case of ***Mohamad Kavi Mohamad Amin*** (supra), the Supreme Court held as follows :

> *"So far as the facts of the present case are concerned, we are satisfied that it cannot be held that the Mamlatdar exercised the power under Section 84C of the Act within a reasonable time. It need not be pointed out that because of delay, the purchaser is likely to suffer irreparable injury because in the meantime he makes investments over the lands in question. Accordingly, the appeal is allowed. The impugned orders are set aside."*

18.In the facts of the present case, the sale of the subject lands took place in the year 1986; permission to sell the lands was sought for by the respondent No.3 in 1989; the application seeking permission to transfer the subject lands was rejected vide order dated 1.1.1990 and the Collector also issued instructions to initiate inquiry under Section 84C of the Tenancy Act by a communication dated 1.1.1990; and the inquiry

under Section 84C was initiated by a notice dated 14.6.1994. Hence, if considered from the date of the sale, the inquiry under Section 84C of the Tenancy Act has been initiated after a period of more than seven years. Even after the Collector issued instructions to initiate inquiry under Section 84C by communication dated 1.1.1990, the show cause notice under Section 84C of the Tenancy Act was issued as late as on 14.6.1994, after a delay of more than four years. In the meanwhile, the petitioners had made considerable investments in the subject lands, hence, because of the delay, the petitioners would suffer irreparable injury. Applying the principles laid down by the Apex Court in the aforesaid decisions, it cannot be said that the Mamlatdar and ALT has exercised powers under Section 84C within reasonable time. Therefore, the impugned orders cannot be sustained.

19. In the result, the petition succeeds and is allowed. The impugned order dated 25th September, 1995 passed by the Additional Mamlatdar & Agriculture Land Tribunal, Patan (Annexure “E”), the order dated 26th September, 1997 passed by the Deputy Collector, Land Reforms, Mehsana (Annexure “F”) and the order dated 22nd December, 1998 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/BA/53/1998 (Annexure “G”), are hereby set

aside. Rule is made absolute accordingly, with no order as to costs.

[HARSHA DEVANI, J.]

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